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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,054	02/07/2002	Vittoriano DiLuzio	VIFAN.UTL	3391
21590	7590	05/05/2004	EXAMINER	
HINKLE & O'BRADOVICH, LLC			JACKSON, MONIQUE R	
395 SCENIC HIGHWAY			ART UNIT	
LAWRENCEVILLE, GA 30045			PAPER NUMBER	

1773

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/071,054

Applicant(s)

DILUZIO ET AL.

Examiner

Monique R Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 7-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/20/04 has been entered. Claims 5-6 and 14 have been cancelled. Claims 1-4 and 7-13 are pending in the application.

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-4 and 7-13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement as recited previously. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 has been narrowed to recite a density of about 0.92 –0.94 g/cc however it is noted that the original disclosure recited a density of 0.92-0.956 and provided no teaching or guidance to one having ordinary skill in the art to specifically select the newly claimed endpoint 0.94. Hence, the claim limitation limiting the invention to the newly claimed endpoint of 0.94 is considered new matter.

***Claim Rejections - 35 USC § 102***

4. Claims 1-2 and 7-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Bader et al (USPN 5,972,496) for the reasons recited previously and restated below.

Bader et al teach a film structure comprising a polypropylene core layer (b), such as propylene homopolymer, that comprises about 70 to about 95% of the film thickness, and a skin layer (c) comprising an ethylene polymer that is metallized by application of a thin metal layer, particularly aluminum, to an optical density of about 1.5 to about 4.0, which inherently corresponds to a metal layer thickness within the instantly claimed range, and specifically about 1.8 to about 2.6, wherein the polyethylene of the skin layer may be LDPE, LLDPE, MDPE, or HDPE, preferably having a density between about 0.94 and 0.96 g/cc, and wherein the skin layer (c) and the film have thickness within the instantly claimed ranges (Abstract; Col. 3, lines 6-34; Col. 4, line 61-Col. 5, line 59; Col. 6, lines 8-13; Examples.) Hence, Bader et al anticipate the instantly claimed invention, particularly given that it recites the end point 0.94 g/cc, and further given that LDPE, LLDPE, and MDPE (*0.926-0.940 g/cc by accepted definition*) inherently encompass the instantly claimed density ranges.

***Claim Rejections - 35 USC § 103***

5. Claims 3-4 and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bader et al in view of Migliorini et al for the reasons recited previously and restated below.

The teachings of Bader et al are discussed above. Bader et al teach that the core is preferably polypropylene, particularly highly isotactic polypropylene, exemplifying polypropylene homopolymer, and that preferred polypropylenes are well known in the art but do not specifically teach that the polypropylene of the core layer is a copolymer or a terpolymer.

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However, propylene copolymers and terpolymers are obvious species of polypropylene utilized as a core layer in a metallized multilayer substrate as taught by Migliorini et al (Col. 1, lines 54-64) and hence would have been obvious to one having ordinary skill in the art at the time of the invention. Further, it is well-established in the art that LLDPE, LDPE, MDPE and HDPE are produced from ethylene optimally polymerized with hexene or octene to modify the properties of the polyethylene based on the desired end use and hence would have been obvious to one having ordinary skill in the art at the time of the invention.

***Response to Arguments***

6. Applicant's arguments filed 2/20/04 have been fully considered but they are not persuasive. The Applicant argues that the instant claims now limit the invention to 0.92-0.94 g/cc and that the Applicant has attained a larger density range in which metallization is possible, 0.92-0.956, and that the endpoint 0.94 does not constitute new matter given that it falls within the originally claimed range of 0.92-0.956. However, as stated above, the Examiner maintains her position that the newly recited endpoint of 0.94 is new matter because the addition of a specific density range which differs from that described in the specification constitutes new matter given that one having ordinary skill in the art at the time of the invention would not have known to specifically select the newly claimed endpoint 0.94 given that the instant disclosure provides no guidance or suggestion that 0.94 is a critical density. Further, the Applicant argues that Bader does not anticipate the instant invention because it does not specifically recite the density range of 0.92-0.94 g/cc as instantly claimed. However, the Examiner maintains her position that the terms LLDPE, LDPE, and MDPE, by definition, would inherently encompass the instantly

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claimed range and hence anticipates the invention (Refer to *Fundamental Principles of Polymeric Materials*, page 45.)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R Jackson whose telephone number is 571-272-1508. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul J Thibodeau can be reached on 571-272-1516. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Monique R. Jackson  
Primary Examiner  
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May 3, 2004